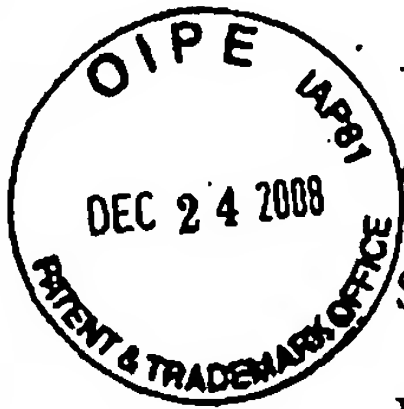


MR3065-19

2008 DEC 29 PM 4:47

Dep & Ref



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : David R. Fischell, et al.  
Serial No. : 10/642,245 : Attn: Office of Finance,  
Refund Section  
Filed : 18 August 2003  
Title : SYSTEM FOR THE DETECTION OF  
CARDIAC EVENTS

REQUEST FOR REFUND OF PETITION FEE

Mail Stop 17  
Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant, hereby requests a refund of the Petition Fee in the amount of \$1,410.00 paid to the U.S. Patent and Trademark Office.

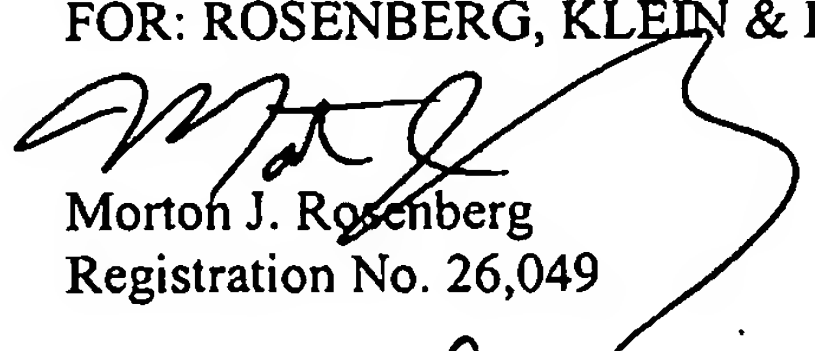
The Petition was dismissed as being moot and the refund of the Petition Fee is proper in accordance with the Decision on the Petition under 37 CFR 1.78(a)(3).

The Decision on the Petition has indicated that the Petition submitted was not necessary and thus, a refund appropriate.

It is requested that the Petition Fee be refunded to Deposit Account 18-2011.

In accordance with the Decision on the Petition, the Petitions Division has requested that a copy of the Decision should accompany this request and attached to this Request for Refund is a copy of the Decision.

Respectfully submitted,  
FOR: ROSENBERG, KLEIN & LEE

  
Morton J. Rosenberg  
Registration No. 26,049

Dated: 23 Dec 2008

Suite 101  
3458 Ellicott Center Drive  
Ellicott City, MD 21043  
Tel: 410-465-6678  
Customer No. 04586



UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

ROSENBERG, KLEIN & LEE  
3458 ELLICOTT CENTER DRIVE-SUITE 101  
ELLICOTT CITY MD 21043

COPY MAILED

NOV 26 2008

In re Application of  
David R. Fischell et al  
Application No. 10/642,245  
Filed: August 18, 2003  
Attorney Docket No. MR3065-19

DECISION ON PETITION  
UNDER 37 CFR 1.78(a)(3)

COPY

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed September 15, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for benefit of priority to the prior-filed Application No. 10/251,505 filed September 20, 2002.

The petition is **DISMISSED AS MOOT.**

Where a claim for priority under 37 CFR § 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(2)(ii). On the other hand, if the USPTO does not note the claim for priority to the prior-filed applications set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(3).<sup>1</sup> In the present case, the Office noted the claim for priority to the prior-filed application in the transmittal letter filed with the application, as shown by their inclusion on the filing receipt.

In view of the above, the \$1,410.00 petition fee submitted is unnecessary. Petitioner may request a refund of the petition fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany the request.

<sup>1</sup> Note MPEP 201.11 (III)(D) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

**Even though, priority was claimed in the first sentence of the specification to Application No. 10/251,505, applicant may want to consider filing an amendment to correct the filing date of September 30, 2002 to September 20, 2002.**

Any questions concerning this decision on petition may be directed to the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

— This application is being referred to Technology Center AU 3762 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

/Karen Creasy/  
Karen Creasy  
Petitions Examiner  
Office of Petitions



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: David R. Fischell, et al. : Attention:

Serial No: 10/642,245 : Patent Petitions

Filed: 18 August 2003 : Division

Title: SYSTEM FOR THE DETECTION OF CARDIAC EVENTS :

**PETITION FOR ACCEPTANCE OF LATE CLAIMING OF PRIORITY**  
**UNDER 37 C.F.R. § 1.78(a)(3)**

Mail Stop – Petitions  
 Honorable Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

Applicants, by the undersigned Attorney hereby Petition for the acceptance of late claiming of priority of the above-referenced Patent Application as being a Continuation-In-Part Application of Serial Number 10/251,505 filed on 20 September 2002 and now issued as U.S. Patent 6,609,023.

Attached to this Petition is a Declaration of Robert E. Fischell, who was appointed with the Power of Attorney at the time of the filing of the above-referenced Patent Application indicating the facts associated with the mistake in not properly claiming priority.

Further attached to this Petition is a Substitute Declaration for Patent Application which properly claims priority on Serial Number 10/251,505 now issued as U.S. Patent 6,609,023.

Adjustment date: 12/31/2008 MGE BREM1  
 09/16/2008 11:00 AM 10642245  
 01 FC:1454 -1410.00 OP

Repln. Ref: 12/31/2008 MGE BREM1 0012421000  
 DA#182011 Name/Number:10642245  
 FC: 9204 \$1410.00 CR